

(i) The current yield records of representative local farms in the surrounding area, with concurrence by the U.S. Soil Conservation Service; or

(ii) The average county yields recognized by the U.S. Department of Agriculture, which have been adjusted by the U.S. Soil Conservation Service for local yield variation within the county that is associated with differences between nonmined prime farmland soil and all other soils that produce the reference crop.

(8) Under either procedure in paragraph (b)(7) of this section, the average reference crop yield may be adjusted, with the concurrence of the U.S. Soil Conservation Service, for—

(i) Disease, pest, and weather-induced seasonal variations; or

(ii) Differences in specific management practices where the overall management practices of the crops being compared are equivalent.

## **PART 824—SPECIAL PERMANENT PROGRAM PERFORMANCE STANDARDS—MOUNTAINTOP REMOVAL**

Sec.

824.1 Scope.

824.2 Objectives.

824.11 Mountaintop removal: Performance standards.

AUTHORITY: Secs. 102, 201, 501, 503, 504, 506, 508, 510, 515, 517, 701 Pub. L. 95-87, 91 Stat. 448, 449, 467, 470, 471, 474, 478, 480, 486, 498, 516 (30 U.S.C. 1202, 1211, 1251, 1253, 1254, 1256, 1258, 1260, 1265, 1267, 1291).

### **§ 824.1 Scope.**

This part sets forth special environmental protection performance, reclamation, and design standards for surface coal mining activities constituting mountaintop removal mining.

[44 FR 15452, Mar. 13, 1979]

### **§ 824.2 Objectives.**

The objectives of this part are to—

(a) Enhance coal recovery;

(b) Reclaim the land to equal or higher postmining use; and

(c) Protect and enhance environmental and other values protected under the Act and this chapter.

[44 FR 15452, Mar. 13, 1979]

### **§ 824.11 Mountaintop removal: Performance standards.**

(a) Under an approved regulatory program, surface coal mining activities may be conducted under a variance from the requirement of this subchapter for restoring affected areas to their approximate original contour, if—

(1) The regulatory authority grants the variance under a permit, in accordance with 30 CFR 785.14;

(2) The activities involve the mining of an entire coal seam running through the upper fraction of a mountain, ridge, or hill, by removing all of the overburden and creating a level plateau or gently rolling contour with no highwalls remaining;

(3) An industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use is proposed and approved for the affected land;

(4) The alternative land use requirements of § 816.133(a) through (c) of this chapter are met;

(5) All applicable requirements of this subchapter and the regulatory program, other than the requirement to restore affected areas to their approximate original contour, are met;

(6) An outcrop barrier of sufficient width, consisting of the toe of the lowest coal seam, and its associated overburden, are retained to prevent slides and erosion, except that the regulatory authority may permit an exemption to the retention of the coal barrier requirement if the following conditions are satisfied:

(i) The proposed mine site was mined prior to May 3, 1978, and the toe of the lowest seam has been removed; or

(ii) A coal barrier adjacent to a head-of-hollow fill may be removed after the elevation of a head-of-hollow fill attains the elevation of the coal barrier if the head-of-hollow fill provides the stability otherwise ensured by the retention of a coal barrier;

(7) The final graded slopes on the mined area are less than 1v:5h, so as to create a level plateau or gently rolling configuration, and the outcrops of the plateau do not exceed 1v:2h except where engineering data substantiates, and the regulatory authority finds, in writing, and includes in the permit